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No. _____

In The
Supreme Court of the United States
October Term, 1995

◆◆◆

HELEN L. LANE,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

◆◆◆

**On Petition For Writ Of Certiorari To
The United States Court Of Appeals For
The Eighth Circuit**

◆◆◆

PETITION FOR WRIT OF CERTIORARI

◆◆◆

HELEN L. LANE

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45 pp

QUESTIONS PRESENTED

1. Chapter 12 of the Bankruptcy Code (11 U.S.C.) allows for the lifting of the automatic stay of relief under certain provisions. The questions presented are:

A. Whether lifting of the stay by U.S. Bankruptcy Court allows Internal Revenue to proceed to Tax Court on only certain years, although stay was lifted on all years involved in Bankruptcy Case.

B. If all years are to come before Court the not included years had some operating losses which should be allowed a hearing?

2. Whether under Uniform Probate Code § 30-2620(2) Conservatorship is allowed to be established

over persons, without establishment of disability, as farm manager only thus not responsible for filing tax forms or paying the taxes, § 30-2653(c)(20).

PARTIES TO THE PROCEEDING

Petitioner, Helen L. Lane, is a resident of Lincoln, Nebraska. She was the Petitioner in the U.S. Tax Court and was the Appellant before the United States Court of Appeals for the Eighth Circuit.

Respondent Commissioner of the Internal Revenue is a part of the United States Government. Respondent was also an Appellee before the United States Court of Appeals for the Eighth Circuit.

There are no other parties to this action.

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CITATION OF OPINIONS BELOW

On November 24, 1995, the United States Court of Appeals for the Eighth Circuit issued its unpublished opinion, affirming the decision of the United States Tax Court. See 8th Cir. Rule 47B.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

8th Cir. Rule 47B
Rule 155
U.P.C. §30-2620(2)
U.P.C. §30-2653(c)20

JURISDICTION

Petitioner seeks review of the opinion of the United States Court Appeals for the Eighth Circuit and its judgment of November 24, 1995. That judgment affirmed the United States Tax Court's decision of November 9, 1994 that there are deficiencies in income taxes due from the Petitioner based on Rule 155.

STATEMENT OF THE CASE

Petitioner, Helen L. Lane and her mother, Theresa Lane, were placed under a conservatorship in separate cases on December 19, 1977. (see Exhibit 2B of March 21, 1994, U.S. Tax Court hearing) Howard S. Hinman was conservator.

No petition or letters of conservatorship were entered as exhibits on March 21, 1994 U.S. Tax Court hearing. However, a copy of conservator's bond with no limitations noted was entered (Exhibit J) of March 21, 1994 Tax Court hearing.

Conservator Hinman failed to pay taxes, federal income and real estate taxes, during the term of his conservatorship. Yet he collected and deposited monies in banks. The wards were not given access to the money.

Mr. Hinman was the conservator of Helen L. Lane from December 19, 1997, until late 1986 or thereabout. Mr. Hinman was conservator of Therese Lane from December 19, 1977, until May 30, 1981, when she passed away after a car accident. He became her personal representative and still is the personal representative of the estate.

December 6, 1983, Internal Revenue Services mailed a letter to Helen L. Lane c/o conservator Hinman, stating no tax returns were filed for years 1977 through 1982. December 25, 1983, Mr. Hinman answered. "Due to the limitation in the conservatorship (management of farm property) I am not required to file return on behalf of Helen Lane." "Letter of Conservatorship enclosed for your file." (Exhibit 9-I of March 21, 1994 Tax Court hearing)

On August 24, 1985, Helen L. Lane received from Internal Revenue Service a letter of Deficiency for Taxes due for years 1978 through 1983.

November 21, 1985, Helen L. Lane filed Petition of Denial of Deficiency for taxes due. No mention of conservator Hinman was made as Helen L. Lane answered Pro se.

April 3, 1987, Successor Conservator Hershel Staats through attorney, Miles W. Johnston, Jr., filed for United States Bankruptcy Protection under Chapter 12 Bankruptcy in Omaha, Nebraska.

On May 21, 1987, Internal Revenue Service filed proof of claim in U.S. Bankruptcy Court for the years 1979 through 1986.

June 23, 1993, United States of America in behalf of its agency, the Internal Revenue Service,

filed a motion for dismissing chapter 12 proceeding, attaching proof of claim dated 5-21-87 for years 1979 through 1986.

September 8, 1993, the U.S. Bankruptcy Court entered its journal entry. "The U.S.A.'s Motion to Dismiss is denied. The IRS is hereby provided relief from stay of 11 U.S.C. § 362 to proceed to judgment in tax Court."

March 21, 1994 in U.S. Tax Court at hearing only years 1979 through 1983 were at issue.

Helen L. Lane represented herself Pro se as attorney she had hired to represent her did not enter his appearance.

Former Conservator Hinman was subpoenaed by the Internal Revenue Service. He testified that he was appointed to manage the farm real estate only as

conservator to stop a foreclosure action on farms by a mortgagee. In re Estate of Wagner, 220 Neb. 32, 367 N.W. 2d 736 (1985); In re Estate of Sim, 403 N.W.2d 721 (1987); In re Estate of Braaten, 502 N.W.2d 512 (N.D.); In re Matter of Conservatorship of Kinney, 495 N.W. 2d 69 (N.D. 1993). (§5-425)

August 15, 1994, memorandum opinion was issued by U.S. tax Judge Körner entering decision under Rule 155.

In as much as years 1984 through 1986 included operating losses which would effect tax years 1982 and 1983. Helen L. Lane filed a motion of clarification of tax years included in relief from stay with U.S. Bankruptcy Court on November 7, 1994.

November 7, 1994 Notice of Objection to Computation of Income Taxes etc. was mailed to

federal tax court. Lane during tax hearing of March 21, 1994 brought to attention the fact that Hinman was conservator through 1986 (Page 60 line 9 through 25) (Page 61 line 1 through 8). Also in signed joint stipulation, Lane entered other expenses were incurred from period of conservatorship which should be allowed to be deducted on 1040.

November 9, 1994 tax court Judge Körner entered his decision based on Rule 155.

November 17, 1994, U.S. Bankruptcy Court Judge John C. Minahan, Jr. filed his journal entry concerning Lane's request for clarification. "The Internal Revenue Service may proceed to judgment in tax court respecting tax claims against debtor for any and all years before or after the date this bankruptcy case was filed."

February 6, 1995, Lane filed an appeal to United States Court of Appeals for the Eighth Circuit.

November 24, 1995, before Wollman, Magill and Hansen Circuit Judges, it was concluded the judgment of tax court was correct. See 8th Cir. R. 47B.

REASONS FOR GRANTING OF CERTIORARI

I. CERTIORARI SHOULD BE GRANTED TO RESOLVE WHY UNITED STATES BANKRUPTCY COURT'S RULING ON CLARIFICATION OF YEARS ON WHICH STAY WAS NOT HONORED BY U.S. TAX COURT'S DECISION.

Lane feels U.S. Tax Court's decision based on years 1979 to 1983 was not in keeping with actual amount of taxes due. Two (2) of the years from 1984 through 1986 included large operating losses, which Lane had rights to carry back. This point was

indirectly raised at tax hearing on March 21, 1994. Other deductions also were allowable. This point was listed in joint stipulation signed March 21, 1994 before tax court. The chapter 12 bankruptcy is still open.

II. CERTIORARI SHOULD BE GRANTED AS CONSERVATORSHIP STATUTES WERE MISUSED.

Conservator Hinman had the duty to seek the court's guidance as to his duties. Also by statute, § 30-2620(2), tow rules apply before a conservator can be appointed. Conservatorship is not based on farm management alone. See Hyde v. Crocker, 185 Neb. 428, 176 N.W.2d 234 (1970); Wagner v. Wagner, 220 Neb. 32, 367 N.W.2d 736 (1985). Since the Lanes were placed under a conservatorship, the courts felt the two requirements were met.



CONCLUSION

In other words, due to Hinman's failure to perform his duties according to Uniform Probate Code in accordance with § 30-2653(c)(20) pay taxes, this certiorari is now before the U.S. Supreme Court.

I PRAY THIS CERTIORARI will be accepted.

Respectfully submitted,

HELEN L. LANE

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APPENDIX A
UNITED STATES COURT OF APPEALS
for the Eighth Circuit

No. 95-1375

| | |
|-------------------|--------------------------|
| Helen L. Lane, | * |
| | * |
| Appellant, | * |
| | • Appeal from the United |
| | • States Tax Court |
| v. | * |
| | * |
| Commissioner of | * |
| Internal Revenue, | (UNPUBLISHED) |
| | * |
| Appellee. | * |

Submitted: November 2, 1995

Filed: November 24, 1995

Before WOLLMAN, MAGILL, HANSEN, Circuit
 Judges.

PER CURIAM.

Helen L. Lane appeals from the tax court's¹ redetermination of her federal income tax liability for the years 1979 through 1983. Having carefully reviewed the tax court record and the parties' briefs, we conclude the judgment of the tax court was correct. Accordingly, we affirm. See 8th Cir. R. 47B.

A true copy.

ATTEST: /s/ Michael E. Gens

CLERK, U.S. COURT OF
APPEALS, EIGHTH CIRCUIT.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS For the Eighth Circuit

No. 95-1375

| | |
|-------------------|--------------------------|
| Helen L. Lane, | * |
| | * |
| Appellant, | * Appeal from the United |
| | * States Tax Court |
| vs. | * |
| | * |
| Commissioner of | * |
| Internal Revenue, | * |
| | * |
| Appellee. | * |
| | * |

JUDGMENT

This appeal from the United States Tax Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the tax court in this

¹The Honorable Jules G. Körner, III, United States Tax Court Judge.

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cause is affirmed in accordance with the opinion of this
Court.

November 24, 1995

A true copy.

ATTEST: /s/ Michael E. Gens

CLERK, U.S. COURT OF
APPEALS, EIGHTH CIRCUIT.

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APPENDIX C

T.C. Memo. 1994-381

UNITED STATES TAX COURT

**HELEN L. LANE, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent**

Docket No. 42837-85. Filed August 15, 1994.

Helen L. Lane, pro se.

Lisa K. Hartnett, for respondent.

MEMORANDUM OPINION

KÖRNER, Judge: Respondent determined deficiencies in and additions to petitioner's Federal income tax as follows:

| Year | Deficiency | <u>Additions to Tax</u> | |
|------|------------|-------------------------|--------------|
| | | Sec. 6651(a) | Sec. 6653(a) |
| 1979 | \$1,235 | \$ 309 | \$ 62 |
| 1980 | 2,005 | 501 | 100 |

| | | <u>Additions to Tax</u> | |
|-------------|-------------------|-------------------------|---------------------|
| <u>Year</u> | <u>Deficiency</u> | <u>Sec. 6651(a)</u> | <u>Sec. 6653(a)</u> |
| 1981 | 4,788 | 1,197 | 239 |
| 1982 | 4,457 | 1,025 | 233 |
| 1983 | 3,754 | 863 | 188 |

| <u>Additions to Tax</u> | | | |
|-------------------------|-------------------|------------------------|------------------|
| <u>Year</u> | <u>Deficiency</u> | <u>Sec. 6653(a)(2)</u> | <u>Sec. 6654</u> |
| 1979 | \$1,235 | | \$ 51 |
| 1980 | 2,005 | | 128 |
| 1981 | 4,788 | * | 367 |
| 1982 | 4,457 | * | 434 |
| 1983 | 3,754 | * | 230 |

*50 percent of the interest due on the deficiency.

Helen L. Lane (petitioner) is an individual who resided in Fairmont, Minnesota, at the time the petition was filed in this case. All statutory references are to the Internal Revenue Code in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure, except as otherwise noted.

Petitioner and her mother Theresa Lane (Theresa) were the joint legal owners of two parcels of farmland in Hall County, Nebraska, during 1979, 1980, and 1981 until May 30, 1981, when petitioner's mother died. After her death, petitioner, as surviving joint owner, was the sole owner of the farm properties.

On December 19, 1977 Howard S. Hinman (Hinman) was appointed by the County Court of Hall County, Nebraska, to be the conservator of petitioner, charged only with the management of the farm property, which petitioner owned jointly with her mother. The pertinent portions of the order of appointment of the County Court of Hall County, Nebraska, read as follows:

4. That Helen Lane is the joint owner

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with Theresa Lane of two quarter sections of farm land in Hall County, Nebraska, and that Helen Lane is unable to manage the business affairs in conjunction with the operation of farm lands in Hall County, Nebraska, and that it is necessary for a conservator [sic] be appointed to manage the farm properties only.

5. That Howard S. Hinman is a proper person to act as conservator to manage the farm property and that he be appointed to act as conservator with respect to the affairs of Helen Lane.

IT IS THEREFORE ORDERED,
ADJUDGED AND DECREED BY THE COURT
that a conservatorship be established for Helen Lane,
a protected person, and that Howard S. Hinman be appointed conservator, and letters of conservatorship

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shall be issued upon said appointee accepting and [sic] filing an approved bond in the amount of \$30,000.00, of Helen Lane's estate to manage the farm property jointly owned by Helen Lane.

Pursuant to the above order, Mr. Hinman, as conservator, filed periodic reports of income and expense concerning the operation of petitioner's property. These reports, however, did not purport to be a complete accounting of all of petitioner's income and expense. Instead, the reports of the conservator, which are in the record herein, appear generally to report income related to petitioner's farm operation, bank interest, and expenses related thereto, including payments for petitioner's benefit and the benefit of Theresa Lane, petitioner's mother.

Petitioner did not file income tax returns for the years 1979 through 1983, nor did Mr. Hinman. Whether she filed returns for years later and prior to this period is not known. Mr. Hinman's periodic reports of income and expenses for the period involved in this case were filed with the County Clerk of Hall County, Nebraska, and were matters of public record.

Upon audit, and determining that petitioner had not filed income tax returns for the years here in issue, respondent issued to her a statutory notice of deficiency in the amounts, together with additions to tax, that we have indicated above. Petitioner appealed to this Court from such determination. At trial and on brief, respondent has conceded the following matters:

1. That petitioner was not liable for additions to tax under sections 6651(a) and 6653(a).
2. That petitioner was entitled to a personal exemption of \$1,000 for each of the years 1981, 1982, and 1983.
3. That petitioner was entitled to a \$200 interest exclusion from her income for 1981.
4. That petitioner and her late mother Theresa were equal partners in the farm property in Nebraska in which petitioner had an undivided interest until Theresa's death in 1981, when petitioner succeeded to the entire interest. This constitutes a concession from the original statutory notice of deficiency, which contained respondent's determin-

ation that petitioner had a 64-percent undivided interest in said property.

5. Respondent conceded that the gross income of petitioner in the statutory notice should be reduced for the years involved to the following amounts:

| <u>Year</u> | |
|-------------|-------------|
| 1979 | \$19,455.71 |
| 1980 | 20,291.38 |
| 1981 | 33,898.58 |
| 1982 | 39,517.22 |
| 1983 | 39,000.00 |

6. Respondent further "conceded" changes in petitioner's allowable deductions for the years and in the amounts as follows:

| <u>Year</u> | |
|-------------|-------------|
| 1979 | \$13,364.50 |
| 1980 | 9,930.05 |
| 1981 | 22,761.72 |

| <u>Year</u> | |
|-------------|-----------|
| 1982 | 25,397.88 |
| 1983 | 21,459.37 |

At trial, apart from a rather sketchy stipulation from the parties, in which some of the above concessions by respondent were contained, there was no presentation of evidence by petitioner with respect to the amount of her taxable income for the years in question, or of any errors committed by respondent with respect thereto. To the contrary, petitioner's entire case presented to the Court (she filed no brief herein) was devoted to an attempt to show that her partial conservator, Mr. Hinman, was required to file her tax returns, which he admittedly did not do, and that therefore he, rather than petitioner, was the

person responsible for her income taxes involved herein.

It is established law that, with respect to ordinary issues raised by petitioner in this Court, petitioner has the burden of proof on the issues presented, "except as otherwise provided by statute or determined by the Court; and except that, in respect of any new matter, increases in deficiency, and affirmative defenses, pleaded in the answer, it shall be upon the respondent." Rule 142(a); Welch v. Helvering, 290 U.S. 111 (1933).

The case has been narrowed somewhat by the stipulation of the parties and by the various concessions that respondent has made herein, as hereinbefore noted. One problem exists, however.

As can be seen, respondent conceded in part the amounts of gross income that she had determined against petitioner for each of the years involved, which we have noted. These amounts of concession by respondent simply reduce the amount of deficiency of tax that would result from a Rule 155 computation and, as such, respondent's presumption of correctness with respect to the balance is not disturbed.

However, respondent also undertook to change the amounts of allowable deductions as determined in her statutory notice. For the years 1981, 1982, and 1983, such revised amounts of allowable expenses were larger than the amounts allowed by respondent in her statutory notice, and thus are also allowable concessions by respondent,

reducing petitioner's taxable income. However, with respect to the years 1979 through 1980, respondent undertook to reduce the amount of expenses that were allowable to the amounts of \$13,364.50 and \$9,930.05, respectively, as compared to the amounts of deduction allowed in the statutory notice herein for these years, which were \$15,448 and \$10,650, respectively. Since the effect of these adjustments would increase the amount of petitioner's taxable income by reducing the amount of allowable expenses, this "concession" by respondent in fact amounts to raising a new matter that would increase petitioner's deficiency in those years and thus is a new matter which respondent has not pleaded, as to which respondent would have the burden of proof, and as to

which respondent has presented nothing. Rule 142(1). Accordingly, such alleged "concessions" of allowable expenses for the years 1979 through 1980 will be ignored herein.

We turn now to the principle and only argument that petitioner herein had advanced--that Mr. Hinman, having been appointed her partial conservator with respect to her farm property in Nebraska, was the person who had the obligation to file her income tax returns and pay her taxes.

Section 6212(a) provides:

If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitle A or B or chapter 41, 42, 43, or 44, he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail.

In turn, section 6213(a) provides in relevant part:

Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed * * * the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. * * *

Pursuant to section 6212(a), respondent sent a statutory notice of deficiency to this petitioner where she then lived in Fairmont, Minnesota. Petitioner timely filed a petition for redetermination of tax with this Court in her own name, and signed the petition herself. Petitioner is accordingly properly before this Court.

Concerning who is a proper party before this Court, Rule 60(a)(1) provides in relevant part:

A case shall be brought by and in the name of the person against whom the Commissioner determined the deficiency (in the case of a notice of deficiency) * * * or by and with the full descriptive name of the fiduciary entitled to institute a case on behalf of such person.
* * *

Furthermore, Rule 60C provides:

The capacity of an individual, other than one acting in a fiduciary or other representative capacity, to engage in litigation in the Court shall be determined by the law of the individual's domicile. * * * The capacity of a fiduciary or other representative to litigate in the Court shall be determined in accordance with the law of the jurisdiction from which such person's authority is derived.

Finally, Rule 60(d) provides in relevant part:

Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may bring a case or defend in the Court on behalf of the infant or incompetent person. An infant or incom-

petent person who does not have a duly appointed representative may act by a next friend or by a guardian ad litem. * * *

In the instant case, as we have shown, respondent sent a notice of deficiency to petitioner, who filed a petition with this Court, attaching a copy of said statutory notice, as our Rules provide. Mr. Hinman, appointed by the County Court of Hall County, Nebraska, to manage petitioner's farm property, was specifically appointed for that purpose only. The order of the State court did not purport to appoint him as the "general guardian, committee, conservator, or other like fiduciary" (see Rule 60(d), supra) of this petitioner. If the County Court of Hall County, Nebraska, had done so, then arguably Mr. Hinman, as conservator, would have been a proper

person to file returns for petitioner and to file petition with this Court on her behalf. That, however, is not the case. The order of the Nebraska court is specific as to the limitations of Mr. Hinman's authority as conservator, being confined solely to the management of petitioner's farm property. There is no suggestion, either explicit or implicit, that Mr. Hinman was being made responsible for petitioner's affairs generally, outside the management of the farm properties, and that such general responsibility and authority include the return preparation, filing, and payment of income tax on petitioner's behalf. The Nebraska court's order may fairly be read to the contrary. The sum of it is that we hold that petitioner was never declared an incompetent person by the County Court of Hall

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County, Nebraska, and that when Mr. Hinman was appointed conservator by said court, he was appointed for the limited purpose of managing petitioner's farm property, and that such appointment did not carry with it the obligation to file income tax returns and pay income tax on petitioner's behalf. Petitioner was the proper person to file a petition in this Court, and she did. Except as stipulated by the parties and conceded by respondent, she has failed to show error in respondent's determination.

Sections 6212(a) and 6213(a), quoted supra, provide that if the Commissioner determines a deficiency against a taxpayer, then such taxpayer may file or petition for redetermination with this Court.

Such taxpayer may be represented in this Court as

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prescribed in Rule 60. Petitioner received the statutory notice of deficiency addressed to her, and she properly filed a petition herein. Nowhere was Mr. Hinman mentioned, and he has not attempted to enter this litigation. It does not appear to us that he had any obligation with respect to petitioner's taxes, nor any standing to represent petitioner herein. This Court has no jurisdiction to award a decision for or against him. If petitioner believes that she had a right to have her tax returns prepared and paid by Mr. Hinman, she will have to vindicate that right in another place.

Decision will be entered under Rule 155.

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APPENDIX D

UNITED STATES TAX COURT

HELEN L. LANE,)
)
Petitioner,) Docket No. 42837-85
v.)
)
COMMISSIONER OF)
INTERNAL REVENUE,)
)
Respondent.)

DECISION

Pursuant to the opinion of the Court filed August 15, 1994, and incorporating herein the facts recited in respondent's computation as the findings of the Court, it is

ORDERED AND DECIDED: That there are deficiencies in income taxes due from the petitioner for

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the taxable years 1979, 1980, 1981, 1982 and 1983 in the amounts of \$101.00, \$1,098.00, \$1,354.00, \$1,899.00 and \$2,463.00, respectively;

That there are no additions to the tax due from the petitioner for the taxable years 1979, 1980, 1981, 1982 and 1983, under the provisions of I.R.C. § 6651(a);

That there are no additions to the tax due from the petitioner for the taxable years 1979, 1980, 1981, 1982 and 1983, under the provisions of I.R.C. § 6653(a); and

That there are not additions to the tax due from the petitioner for the taxable years 1979, 1980, 1981, 1982, and 1983, under the provisions of I.R.C.

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§6654, in the amounts of \$4.00, \$70.00, \$104.00,
\$185.00 and \$151.00, respectively.

Entered: November 9, 1994

/s/ Jules G. Körner, III
Judge

* * * * *